(916) 445-6414

April 10, 1985

Ms. Nancy Stinnett
County of Yolo
625 Court Street, Room 104
Woodland, California 95695

Dear Ms. Stinnett:

This letter is in response to your letter of January 24, 1985, in which you ask whether a transfer from a taxpayer to his wife and son in joint tenancy constitutes a change of ownership when the taxpayer has recorded a document declaring that all real property which he owns and which is held by he and his wife in joint tenancy is community property. The facts as explained in your letter and a conversation that I had with a member of your staff on March 12, 1985, are as follows:

1. On June 26, 1950, M retained a life estate in the subject property with the remainder to her son, A On or about September 2, 1982, the M life estate terminated and A became owner of 100 percent of the property.

2. On July 11, 1983, R , A 's wife, quitclaimed any community property interest she may have had in the subject property.

3. On October 11, 1984, A transferred the property to himself, R , and D , his son, as joint tenants. Also on October 11, 1984, Di D 's wife, quitclaimed any community property interest she may have had in David's interest in the property.

4. On January 21, 1985, A signed and recorded a document entitled "Declaration Regarding Community Status" in which he declared that all real and personal property which he owns and which is held in both his and his wife's name, is community property. The document states that "[t]his is true regardless of the fact that all or some of said property may be held by us in joint tenancy form 'for convenience only'. The purpose of this document is to defeat the survivorship characteristic of joint tenancy".

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You did not reappraise the property on October 11, 1984, when the deed was recorded adding joint tenants. Now that the community property declaration has been recorded, you ask whether the property is subject to reappraisal, and, if so, what percentage.

Pursuant to the facts outlined in steps 1 and 2 above, by July 11, 1983, A owned 100 percent of the property as his separate property. On October 11, 1984, A transferred the property to himself, R , and D That transfer was excluded from change in ownership by Revenue and Taxation Code Section 65(b) which excludes creation of a joint tenancy interest when the transferor is also one of the transferees. As a result of that transfer, A , R and D each owned an undivided one-third interest in the property as their respective separate property. On January 21, 1984, A signed and recorded a declaration that all real property owned by him is community property regardless of the manner in which title is held. The declaration signed by A had the effect of transmuting real property which he owned as his separate property into community property. (Civil Code Section 5103; (see Civil Code Section 5110.710(b) for transmutations occurring after June 1, 1985).) The declaration was not signed by R nor to our knowledge has she executed such a declaration. Therefore, we must assume her one-third interest in the property is still her separate property. At this point, one-third of the property was held by A. and R as community property, one-third by R as her separate property and one-third by D A as his separate property.

The California courts have consistently held that property cannot be held both as community property and in joint tenancy because the incidents of joint tenancy are inconsistent with the incidents of community property. (Tomaier v. Tomaier, 23 Cal. 2d 754, 757 (1944).) Further, A s declaration expressly stated that his intent was to defeat the survivorship characteristic of joint tenancy. It is settled that the incident of survivorship is of such fundamental importance to joint tenancy that if it is altered, the joint tenancy is destroyed. (McDonald v. Morley, 15 Cal. 2d 409, 214 (1940).) Therefore, there is no question that A 's transmutation of his undivided one-third interest into community property destroyed the joint tenancy character of that interest. The question is whether the joint tenancy interests held by R and A survived. Our research has disclosed no case with the same fact pattern as this case. However, it is settled law that where there are three or more joint tenants, and one joint tenant conveys his share to a third party or to another joint tenant, the joint tenancy is severed as to the interest conveyed and continues among the other joint tenants. (1 Arthur G. Bowman, Ogden's Revised California Real Property Law, §7.19 (1974).) In Shelton v. Vance, 106 Cal. App. 2d 194, 196 (1951), the court stated that where A, B, and C were joint tenants and A

conveyed his interest to B, title to the undivided one-third interest conveyed vested in B as a tenant in common, and in B and C as joint tenants as to an undivided two-thirds interest. This is the closest case we could find to the situation you present. Therefore, using that analysis, we conclude that a one-third interest is community property held by A and R . They hold this interest as tenants in common with R and D who hold their undivided two-thirds interest in joint tenancy.

For purposes of change in ownership, this conclusion results in the following analysis. The transmutation of A s interest to community property is an interspousal transfer excluded by Section 63. The resulting change in status of the one-third interest from being held in joint tenancy to tenants in common is a change in the method of holding title excluded by Section 62(a)(1). It is our opinion that no change in ownership occurred.

If you have any questions or wish to discuss this further, please contact me.

Very truly yours,

Michele F. Hicks
Tax Counsel

MFH:mw